

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 02-53261-JRG
ROMEO SEMBRANO and
RINA R. SEMBRANO, Chapter 13
Debtors.
_____ /

**ORDER ON FEE APPLICATION OF
DAVID A. BOONE**

The court has reviewed the fee application of David A. Boone filed on July 15, 2004, as well as a subsequent application file on December 6, 2004. The first application seeks additional compensation in the amount of \$3,655.50 and the second seeks an additional \$944.50. For the reasons hereafter stated, the application will be granted in part and denied in part.

The debtors' petition was filed on June 12, 2002. There is nothing in the schedules to suggest this is an unusual Chapter 13 case. The debtors own a home which they valued at \$450,000 at the time of the filing. They have three mortgages on the property totaling \$224,737. They own a 2001 Chevy Van, a 1992 Izuzu and a 1987 Astro Van. They have eight unsecured creditors totaling \$66,223.

1 The estimated fees for this case at the time of filing were
2 \$2,800 of which \$500 was paid by the debtors prior to filing. The
3 fees were estimated pursuant to the court's fee schedule.

4 The San Jose Division of the Northern District has over 7,000
5 pending Chapter 13 cases. The majority of these cases are similar
6 in the sense that they involve similar legal services such as
7 filing the petition, statement of affairs and schedules and,
8 possibly, a motion to sell or refinance a residence, a motion for
9 relief from the automatic stay, etc. As a result, the court has
10 established Guidelines For Payment Of Attorney's Fees In Chapter
11 13 Cases. The Guidelines include a fee schedule. The schedule
12 does not limit fees but rather provides that if an attorney charges
13 in accordance with the schedule, and no objections are raised, the
14 scheduled fees will be approved at the time of confirmation of the
15 plan without the filing of a fee application. Numerous courts
16 across the country have fee schedules for Chapter 13 cases.

17 Periodically, the consumer bar surveys fees nationally and
18 presents a request for a review and adjustment of the guideline
19 fees.¹ A copy of the court's current fee schedule is attached. It
20 was adopted on August 1, 2003, based on a recommendation from the
21 consumer bar. The present format contains three types of standard
22 fees. The first involves fees for the services rendered in the
23 basic case which can range from \$1,800 to \$6,350, depending on the
24 circumstances.

25 This type of fee should handle the vast majority of cases from
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27 ¹ The National Association of Consumer Bankruptcy Attorneys periodically prepares a
28 survey entitled Chapter 13 Attorneys Fees & Function Survey. This Survey provides information
about fee schedules and fee practices for approximately 100 courts across the country.

1 start to finish unless extraordinary circumstances exist.

2 The second type of fee is a standard fee for handling the sale
3 or refinance of real property or a motion to avoid a judicial lien.
4 The fee is \$300 if there is no court hearing required and \$450 if
5 one is needed. The bar represents that this is a reasonable fee
6 for this service.

7 The final type of fee is based on the fact that in some cases
8 circumstances change during the course of the case. Plans
9 sometimes need to be modified and a standard fee of \$200-\$400 is
10 set, provided the modification is more than one year after the
11 filing of the petition. A fee of \$200-\$350 is set for new motions
12 for relief from the automatic stay and a fee of \$450 for motions
13 to dismiss or convert. Again, these fees were proposed by the bar
14 as representing reasonable fees for these services absent
15 extraordinary circumstances.

16 The guideline fees are normally approved in the order
17 confirming the debtor's plan. The debtors' plan was confirmed on
18 October 9, 2002. Boone was awarded \$2,800 in fees at that time
19 pursuant to the guidelines in effect.

20 In a normal case additional fees may be requested by
21 application for those cases with complications not anticipated by
22 the schedule. Boone's application of July 15, 2004, seeks
23 additional fees for the following work:

24	General/Basic Case	\$3,053.00
25	Claims/Review and Objections	2,893.00
26	Refinance	141.00
	Plan Modifications	473.00
	Fee Application	195.50

27 Having reviewed the file and pleadings, as well as the
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UNITED STATES BANKRUPTCY COURT

For The Northern District Of California

1 application, the court will approve the last four requests.
2 However, with respect to the charges for handling the basic case
3 the court finds no basis for the \$3,053.00 requested. The
4 guidelines in effect at the time of the filing provided fees for
5 handling the basic case. Fees for this aspect of Boone's
6 representation were included in the \$2,800 approved at
7 confirmation. The plan was confirmed on October 9, 2002, four
8 months after filing. There were two minor objections from the
9 Trustee that required corrections to be made. There was an
10 objection from General Motors Acceptance Corporation over the value
11 of the debtors' vehicle. The debtors had valued the vehicle at
12 \$16,738.00. GMAC argued the vehicle was worth \$29,497.50. The
13 debtors settled for a value of \$29,000.00. Such an obvious attempt
14 to low-ball the value of the vehicle certainly does not justify
15 additional compensation.

16 The applicant always bears the burden of demonstrating the
17 reasonableness of the request. In re Hecks' Properties, Inc., 151
18 B.R. 739, 745 (S.D.W. Va. 1992); The burden of demonstrating
19 entitlement to the fees requested is on the applicant. In re
20 Stoecker, 114 BR. 965 (Bankr. N.D. Ill. 1990).

21 Based on the foregoing, the court grants the July 15, 2004,
22 application in the amount of \$3,702.50. This is in addition to the
23 fees approved at the time of confirmation. The remainder of this
24 request is denied.

25 The December 6, 2004, application seeks an additional \$944.50
26 for services relating to claims and the refinance of the debtors'
27 residence. Boone billed \$141.00 in connection with the refinance
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1 in his July 15, 2004 application. The current guidelines indicate
2 that \$300 is a reasonable fee for a refinance where a hearing is
3 not necessary. The court finds nothing in the application or time
4 records to support a greater fee. The court will therefor grant
5 an additional \$159 on this application, that amount being the
6 difference between \$300 and \$141.

7 The court allowed \$2,893.00 on the July 15, 2004, application
8 in connection with objection to claims. This is a substantial
9 amount for four objections, one of which went by default and where
10 two of the remaining three were related. The court considered
11 reducing the request but allowed the fees after reviewing the
12 negotiated settlements. Some of the time entries for documenting
13 the settlement were in the second application. The court finds no
14 support in the second application for fees relating to claims in
15 additional to the \$2,893.00 previously approved.

16 By way of summary, the court grants \$3,702.50 in additional
17 compensation in connection with the July 15, 2004, application and
18 \$159 in additional compensation in connection with the December 6,
19 2004, application. Such fees are in addition to the \$2,800 approved
20 at confirmation. The remaining requests are denied.

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22 DATED: _____

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JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE
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*United States Bankruptcy Court
Northern District of California
San Jose Division*

**GUIDELINES FOR PAYMENT OF ATTORNEY'S FEES
IN CHAPTER 13 CASES**

The following are guidelines for the circumstances under which a detailed fee application need not be filed in Chapter 13 cases and the manner in which the Chapter 13 Trustee will disburse fees which are approved.

A. Fee Applications.

1. Counsel may receive an order approving fees and costs up to the amounts set forth in Paragraph 2 without filing a detailed application if:

- (a) Counsel has filed and served the Chapter 13 Trustee with an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," copies of which are available on the Court's website;
- (b) Counsel has accepted no more than \$750 as a retainer in a consumer case or \$1,500 as a retainer in a business case;
- (c) No objection to the requested fees has been raised.

2. The maximum fee that can be approved through the procedure described in Paragraph 1 is:

- \$1800 for the basic case; and an additional
- \$ 750 if the case involves real property claims;
- \$ 500 for each additional parcel of real property with an encumbrance of at least \$10,000;
- \$ 500 if the case involves state or federal tax claims
- \$ 300 if the case involves vehicle loans or leases;
- \$1500 if the case involves an operating business;
- \$ 400 if the case involves support arrears claims;
- \$ 300 if the case involves student loans;
- \$ 300 if the case involves more than 25 creditors, including collection agencies and attorneys.

Additional flat fees for services rendered will be automatically approved, upon application by the attorney without requiring the submission of time records, as follows:

Plan modifications filed after one year from the petition date:

- a. Not requiring amended Schedules I & J \$ 200
- b. Requiring amended Schedules I & J \$ 400

Permission to sell, refinance, or purchase real property, or one or more motions to avoid judicial liens:

- a. Not requiring court hearing \$ 300
- b. Requiring court hearing \$ 450

New motions for relief from the automatic stay, excluding unopposed motions, filed after one year from the petition date:

- a. Regarding personal property \$ 200
- b. Regarding real property \$ 350

Motions to dismiss, convert, or reconvert, excluding Trustee's Notices of Default regarding plan payments: \$ 450

3. If an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" is not filed, counsel has accepted more than the amount authorized in A.1.(b) without court approval, or there is an objection, an order will not be entered automatically pursuant to these Guidelines.

1 4. If counsel elects to be paid other than pursuant to these Guidelines, all fees including the retainer must be
2 approved by the court whether or not the fees are payable through the Chapter 13 Trustee's Office and
whether or not fees are paid for services in connection with the Chapter 13 case.

3 5. If counsel applies for fees, counsel must comply with Rules 2002 and 2016 of the Federal Rules of
4 Bankruptcy Procedure, as well as the "Guidelines for Compensation and Expense Reimbursement of
Professionals" adopted by the Bankruptcy Judges of the Northern District of California.

5 6. Counsel may request reimbursement of out-of-pocket court fees advanced, even if counsel elects to receive
6 the automatic fees available in Paragraph 2.

7 7. On its own motion or the motion of any party in interest, the court may order a hearing to review any fee
whether paid or unpaid.

8 **B. DISTRIBUTION OF FUNDS IN CHAPTER 13 CASES.**

9 Payments shall be disbursed in the following order:

10 1. \$750 towards attorney's fees, less any amount received pre-filing as a retainer;

11 2. To secured creditors and the balance of attorney's fees. Those secured creditors that are specified
12 in the plan to receive fixed monthly payments will be paid the amount specified. If fixed monthly payments are
13 specified in the plan for all secured creditors, the balance of the plan payment will be disbursed toward
attorney's fees. If fixed monthly payments are not specified in the plan for all secured creditors, secured claims
without fixed monthly payments and the balance of attorneys fees will be pro-rated;

14 3. To priority creditors in the order prescribed by the Bankruptcy Code;

15 4. To unsecured creditors.
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26 Revised: 8/03

27 **Case No. 02-53261-JRG**
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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: ORDER ON FEE APPLICATION OF DAVID A. BOONE by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

LISA OLSEN

Devin Derham-Burk
Chapter 13 Trustee
P.O. Box 50013
San Jose, CA 95150-0013

David A. Boone, Esq.
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